

Decision 02-02-034 February 21, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of The Alley Family Trust, as sole owner of East Plano Water Company, to sell, and Watertek, Inc., a California corporation, for the following orders:

- (1) Authorizing the Alley Family Trust to sell and transfer to Watertek, Inc., ownership of certain assets of East Plano Water Company,
- (2) Authorizing East Plano Water Company to withdraw from the water utility business; and,
- (3) Authorizing Watertek, Inc., to engage in and carry on the water utility service to the customers of East Plano Water Company.

Application 01-11-019  
(Filed November 14, 2001)

**OPINION GRANTING REQUEST TO  
TRANSFER ASSETS AND CONTROL**

**1. Summary**

The Alley Family Trust (Alley), as owner of East Plano Water Company (East Plano), and Watertek, Inc. (Watertek), jointly seek authority pursuant to Pub. Util. Code §§ 851 - 854 to transfer assets and control of East Plano from Alley to Watertek, Inc. The application is unopposed, and the authority is granted.

**2. Background**

Alley is the sole owner and operator of East Plano, which to date has not been regulated by this Commission. East Plano serves 13 customers located on Paul and Worth Streets in Porterville, Tulare County. The water system is

comprised of one well, one pump, mains, related appurtenances and parcels of land and easements. The former trustee of Alley, William Paul Alley, operated and maintained the water system for essentially the entire 40-year existence of the system. He recently died. The current trustee, James F. Alley, seeks to transfer the assets of the water company and withdraw from the water business. East Plano has 13 connections with the following rates:

Tariff	Monthly Flat Fee	Number of Customers
Single family residence with notification duty	\$35.00	1
Single family residence	\$43.00	8
Duplex residence	\$69.00	2
Triplex residence	\$99.00	1
Fourplex residence	\$120.00	1
TOTAL CUSTOMERS		13
GROSS MONTHLY REVENUE		\$736.00

Watertek is a Class C public utility corporation regulated by this Commission. Watertek owns three wastewater systems that provide sewer service to approximately 2,800 people, six commercial entities, and four industrial accounts in Monterey County. It also owns the Grand View Gardens water system located about six and one half miles from East Plano, as well as many other small water and wastewater systems. In Decision (D.) 86-12-051, the Commission approved the acquisition of all the stock of Watertek by Raymond L. Smith. Smith is a state certified Grade III wastewater and Grade II water operator, as well as a Grade II Water Distribution Operator and general contractor. According to Watertek's 2000 report to the Commission, Watertek

has \$888,304 worth of water plant in service, and \$320,051 in water and sewer operating revenue. Watertek is currently operating the East Plano water system for Alley. Watertek has the engineering and administrative staff necessary to operate and maintain the East Plano water system. After the transaction is completed, the East Plano customers will be served by Watertek, which does not anticipate any change in tariff rates other than to reflect inflation.<sup>1</sup>

### **3. Description of the Proposed Transfer of Control**

Alley and Watertek state that, pursuant to the terms of the sale agreement, Alley will transfer ownership of certain assets of East Plano, including water production and distribution facilities and other assets developed and owned by East Plano, to Watertek for \$2,216.65. Upon Commission approval of this transaction, East Plano will become a Class D water utility regulated by the Commission. As part of the Commission approval of this application, Alley seeks authority to withdraw from the water utility business and be relieved of further regulation by this Commission.

### **4. Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control...any public utility organized and doing business in this state....” The purpose of this and related sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the situation and to take such action, as a condition of

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<sup>1</sup> Decision 92-03-093, March 31, 1992, Ordering Paragraph 1, allowed Class C and D water utilities to file annually to increase rates by the previous year’s final Consumer Price Index for All Urban Consumers. This increase requires an earnings test.

the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed transfer of assets and control, the parties believe, will provide mutual benefits and will also provide continued high quality service to East Plano's customers. Watertek has a great deal of experience with owning and operating small water systems. The Commission recently considered Watertek's qualifications in operating small water systems, and concluded that Watertek had the qualifications and experience necessary to competently manage a small system, as well as a "good track record" with such systems and a "demonstrated commitment to improve the system." (Grand View Gardens Water Company, D.01-08-004.)

The transfer will also bring the East Plano system under regulation by this Commission. This system appears to have been operated as a public utility, subject to this Commission's jurisdiction pursuant to Pub. Util. Code § 2701. We are familiar with the organizational and administrative challenges presented by small water systems, see, e.g., Application of Tito Balling, Inc., D.00-07-014 and we believe that the customers of East Plano will benefit from this transfer of ownership to a Commission-regulated business entity. We remind Watertek, that we expect complete and timely compliance with all applicable law and regulations.

With regard to Watertek's rates for its East Plano customers, we draw Watertek's attention to Decision 99-10-064, which requires that there be "a Commission decision or resolution authorizing rates (as a) prerequisite to the implementation of rates for an acquired utility," (Ordering Paragraph 2). We will approve East Plano's existing rates as interim rates, but will require

Watertek to file an informal general rate case within six months after the effective date of this decision to determine reasonable rates for these customers.

Under the California Environmental Quality Act (CEQA) and Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), we must consider the environmental consequences of projects that are subject to our discretionary approval. (Public Resources Code § 21080.) Based upon the record, this transfer of control will have no significant effect on the environment because Watertek will continue to operate the East Plano systems as it is now and tariffs will be unchanged by this transaction. Any subsequent tariff change will require Commission approval. Consequently, the Commission need not perform further environmental review. (See CEQA Guideline 1506(b)(3).)

Pursuant to the provisions of California Health and Safety Code (CH&S) § 116525(a), any person or entity operating a public water system must have a permit to operate that system from the Department of Health Services. A change in ownership of a public health system requires the prospective new owner to apply to and satisfy the Department's requirement that the new owner "possesses adequate financial, managerial, and technical capability to assure the delivery of pure, wholesome, and potable drinking water" (CH&S Code § 116540). Accordingly, apart from authorization from the Commission for Watertek's acquisition of East Plano, Watertek also must apply to the Department of Health Services for reissuance of the existing permit of East Plano.

Notice of this application appeared in the Commission's Daily Calendar on November 20, 2001. No protests were received.

The Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to

alter the preliminary determinations. As no hearing is required, and pursuant to Rule 6.6 of our Rules of Practice and Procedure, Article 2.5 of the Rules ceases to apply to this proceeding.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar on November 20, 2001.
2. The application is unopposed.
3. No hearing is necessary.
4. Watertek is experienced and has a good track record in owning and operating small water systems.
5. Watertek will continue to operate the system as it is now, and tariffs will be unchanged by this decision.

### **Conclusions of Law**

1. To the extent the application seeks authorization for a transfer of assets and change of control pursuant to Pub. Util. Code §§ 851-854, the application should be approved.
2. The Commission need not perform additional environmental review because this transfer of assets and control will have no significant effect on the environment.
3. Pursuant to California Health and Safety Code Section 116525, a change in ownership of a public water system requires application for a new operating permit from the California Department of Health Services.

4. Watertek's rates for its East Plano customers should be approved on an interim basis, and Watertek should be required to file an informal general rate case no later than after the effective date of the transfer.

5. Article 2.5 of the Rules ceases to apply to this proceeding.

6. This order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. The application of The Alley Family Trust (Alley), as the sole owner of East Plano Water Company (East Plano), and Watertek, Inc. (Watertek), for authority to transfer assets and control of East Plano from Alley to Watertek pursuant to Pub. Util. Code §§ 851-854 is approved.

2. As conditions of this grant of authority, Watertek shall assume Alley's public utility obligations, including the permit requirements of the California Department of Health Services.

3. Upon completing this transaction, Alley may withdraw from the water utility business, and will be relieved of further regulation by this Commission with regard to the East Plano System.

4. Before the acquisition is complete, Alley shall deliver to Watertek, and Watertek shall thereafter keep, all records of construction and operation of the East Plano water system.

5. Within 90 days after the acquisition and transfer, Watertek shall file in proper form and annual report of the operations of East Plano from the first day of the year through the effective date of the acquisition and transfer of the water system.

6. Within 30 days after the acquisition and transfer, Watertek shall file tariff sheets adopting the existing rates for service in this service territory.

7. Within 180 days after the acquisition and transfer, effective date of this decision, Watertek shall file an informal general rate case for its East Plano service territory.

8. Applicants shall notify the Director of the Commission's Water Division in writing of the transfer of authority, as authorized herein, within 30 days of the date of the transfer. A true copy of the instruments of transfer shall be attached to the notification.

9. Watertek shall make all books and records of the sales transaction available for review and inspection upon Commission staff request.

10. The authority granted herein shall expire if not exercised within one year of the date of this order.

11. Application 01-11-019 is closed.

This order is effective today.

Dated February 21, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners